

APR 28 11 00 AM '04

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

)
Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Quanah and Iowa Park, Texas)

)
)
) MB Docket No. 04-161
) RM-10959
)

NOTICE OF PROPOSED RULE MAKING**Adopted: April 22, 2004****Released: April 27, 2004****Comment Date: June 18, 2004****Reply Date: July 5, 2004**

By the Assistant Chief, Audio Division:

1. The Audio Division has before it for consideration a Petition for Rule Making filed by KIXC-FM, L.L.C. ("Petitioner"), licensee of Station KIXC(FM), Channel 265C2, Quanah, Texas. Petitioner requests the downgrade of Channel 265C2 to Channel 265C3, the reallocation of Channel 265C3 to Iowa Park, Texas, and the modification of the license of Station KIXC(FM) accordingly. Petitioner states that it will apply for Channel 265C3 when allotted to Iowa Park and further states that it will construct the facilities if the application is granted.

2. Petitioner states that Quanah will not be deprived of its only local service because it is currently served by AM Station KVDL, 1150 kHz, and there is a pending rulemaking to add Channel 233C3 at Quanah. The proposed reallocation of Channel 265C3 at Iowa Park would provide Iowa Park with a potential second local aural service.¹ Iowa Park is a city with a population of 6,431 persons, according to the 2000 U.S. Census. Petitioner states that Iowa Park has a city council form of government, its own police and fire departments, and its own school district (Iowa Park Consolidated Independent School District), which is considered a Recognized District based on the State of Texas Academic Excellence Program. Petitioner represents that Iowa Park qualifies as a community under current Commission guidelines for allocation.

4. Petitioner's proposal involves a change of transmitter site that will create some gain and loss areas, but petitioner has not stated whether there are areas within the current or proposed 60 dBu contour of Station KIXC(FM) where less than five aural reception services are or would be available. For each such area, petitioner is requested to supply information regarding the number of services available and the area and number of persons served. Petitioner is further requested to supply information regarding the total area and number of persons served for both the existing and the proposed service areas of Station KIXC(FM).

5. The proposed allotment would provide Iowa Park with a second local aural broadcast

¹ Iowa Park currently has a vacant allotment, Channel 242A.

transmission service,² thus satisfying Priority Four of the Commission's allotment priorities.³ Similarly, the retention of a second local service at Quanah would satisfy Priority Four. Petitioner is requested to submit information demonstrating that the proposed downgrade to Channel 265C3 and change of community to Iowa Park would provide greater public benefit than retention of Station KIXC(FM) at Quanah, operating on Channel 265C2.

6. The proposed allotment could be made with a site restriction of 15.3 km (9.5 miles) southwest of Iowa Park.⁴ Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Quanah, Texas, and Iowa Park, Texas:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Quanah, Texas	265C3	—
Iowa Park, Texas	242A	242A, 265C3

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

8. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before June 18, 2004, and reply comments on or before July 5, 2004, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554. Additionally, a copy of any filing should be served on the Petitioner, as follows:

Fred R. Morton, Manager
KIXC-FM, L.L.C.
67 Legend Lane
Houston, Texas 77024

² Fred R. Morton, the Manager of KIXC-FM, L.L.C., was also the petitioner in MM Docket No. 99-258, which led to the allotment of Channel 242A at Iowa Park. See *Iowa Park, Texas*, 14 FCC Rcd 18,890 (MM 1999). Mr. Morton expressed his intention to apply for and construct facilities to provide FM service on Channel 242A, as did Apex Broadcasting, LLC.

³ In determining whether to approve a change of community, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982), *recon. denied*, 56 RR 2d 448 (1983). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3).

⁴ The proposed reference coordinates for Channel 265C3 at Iowa Park are: 33-53-55 NL and 98-49-16 WL.

9. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. All envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Section 603 and 604 of the Regulatory Flexibility Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed.Reg. 11549 (February 9, 1981).

11. For further information concerning this proceeding, contact Deborah A. Dupont, Media Bureau, at (202)418-7072. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in the particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the Petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM (TV) Table of Allotments, Section 73.202(b) (73.606(b)) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the Notice of Proposed Rule Making to which this Appendix is attached. The proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the Petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.